

CHLORINATED PARAFFINS

INDUSTRY ASSOCIATION

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July 29, 2005

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**RE: Proposed Rules: Chapter 173-333 WAC – Persistent Bioaccumulative
Toxins**

Dear Mike:

On behalf of the chlorinated paraffins (CP) industry, I am pleased to provide the following comments on the Department of Ecology's proposal¹ to adopt rules for Persistent Bioaccumulative Toxins, under Chapter 173-333 WAC. The CP industry appreciates the work of the Department of Ecology (Ecology) and its goal of reducing public health threats presented by PBT substances. The CP industry takes seriously its product stewardship responsibilities and as such has been actively developing information for multiple decades on the physical, chemical and biological properties of chlorinated paraffins. The industry has been engaged in addressing CP issues with various government agencies including the U.S. Environmental Protection Agency, Health and Environment Canada, the United Kingdom, and the European Union.

The CP industry appreciates that Ecology has been working on the development of this rule for well over a year. We have, however, only recently become aware of this initiative as we learned that short-chain chlorinated paraffins (SCCPs) were added to the December 8 version of the draft rule. For reasons that we have not been able to discern, SCCPs were included in the latest draft, but not identified in any of the previous versions; moreover, we did not find any reference to SCCPs in any of the previous background documents or discussions. Nonetheless, the inclusion of SCCPs in the recent draft has prompted the CP industry to become involved in this proceeding.

Ecology Needs to Follow Its Principles of Good Science and Clear Documentation

The CP industry believes that Ecology has incorporated in the draft rule an important set of principles to be followed in order to establish a credible, scientifically based program. We fully endorse these principles and as such regret that, at least with regards to the

¹ <http://www.ecy.wa.gov/programs/eap/pbt/rule/index.html>

inclusion of SCCPs on the draft PBT list, several of these principles were not followed. For example, two of the principles address the need to base decisions on credible scientific information and the need for clear descriptions of rationale:

- (1) **Scientific information.** Ecology will base decisions on PBTs on sound public policy and credible scientific information.
- (3) **Clear documentation.** Ecology will provide clear and understandable descriptions and rationale for decisions implementing this chapter.

As described in greater detail below, Ecology has not provided any scientific evidence to justify classifying SCCPs as meeting the persistence criteria. First, there is no reference in the rule to any underlying data to justify the inclusion of compounds on the PBT list. We did obtain a Technical Background Document,² which we assume is intended to provide the supporting documentation. A review of this Background Document shows that, in contrast with all of the other substances discussed, there is simply no empirical evidence presented on the persistence of SCCPs. Instead, the document merely asserts the persistence of SCCPs by referring to reports prepared by several foreign organizations. The document merely states:

Persistence: SCCPs are generally considered very persistent. They do not readily hydrolyze in water and are not considered readily biodegradable nor inherently biodegradable (OSPAR, 2001; European Commission, 2000). The Swedish Chemical's Inspectorate/Environmental Protection Agency (2002) and Environment Canada (2003b) have both concluded that SCCPs meet the persistence criterion in the United Nations POPs protocol.

While admittedly the various reports cited do suggest that SCCPs have persistent properties, these reports have not concluded that the properties of SCCPs meet the Washington State criteria. Consider the two reports cited as the basis for the persistence criterion:

Swedish Chemicals Inspectorate - The 5-page Swedish report cited was not intended to serve as a critical review of the data on the persistence of compounds; rather, the report was an exercise “to prioritise chemicals likely to fulfil the criteria for POPs set up by the Stockholm Convention and the UNECE-LRTAP Convention on persistent organic pollutants.” Nonetheless, the Swedish report does identify a few substances as clearly meeting the UNECE-LRTAP criteria and others as “probably” meeting the criteria. It is significant to note that SCCPs were not among the compounds that were classified as clearly meeting the criteria. Most importantly, the Swedish report does not review or discuss any of the underlying data on the persistence of SCCPs. Instead, the report simply notes that there are various documents underway that should be considered as background information in assessing the persistence of SCCPs:

² <http://www.ecy.wa.gov/programs/eap/pbt/rule/docs/14dec04/PBTDocumentation.pdf>

For SCCP, the report that is currently in preparation under the LRTAP Convention and a report generated by the UK within the EU Existing Chemicals Program as well as additional data anticipated within the OSPAR work, could serve as background document for the nomination.

Environment Canada - The Environment Canada (EC) document cited in Ecology's Technical Background Document, while much more robust than the Swedish report, also does not provide a sufficient basis to conclude the persistence of SCCPs. First, the EC document was similarly not intended to serve as a conclusionary document on the PBT properties of SCCPs. Instead, the report was intended as input for consideration at a March 17-19, 2003 meeting of the UNECE Convention on Long-Range Transboundary Air Pollution's Expert Group on POPs. As stated in the Background section of the EC document:

...this SCCP Dossier is considered to be a working document, subject to future revision at the discretion of the Expert Group and Canada as lead author.

While the CP industry recognizes that the Canada report suggests that SCCPs meet the UNECE-LRTAP persistence criteria, it is important to note that the UNECE has not made any such decision. In fact, to this day, SCCPs have not been nominated for consideration by the UNECE. It is further important to note that the UNECE criteria for persistence differ from the Ecology criteria. Of particular note is the fact that the UNECE includes "potential for long range atmospheric transport" and persistence in air among its criteria. Moreover, even Environment Canada has not arrived at a final decision on the persistence of SCCPs as part of its own domestic program. While Environment Canada has put forth a proposal for comment, the CP industry is in the process of establishing an open technical dialogue with Environment Canada to review the PBT properties of SCCPs.

Ecology Should Await the Results on Persistence Testing Before Deciding on SCCPs

The CP industry has been engaged for several years in working with the United Kingdom and other European countries on assessing the risks from SCCPs as well as other chain length chlorinated paraffins. The UK recently updated its environmental risk assessment for SCCPs (December 2004), which suggested that SCCPs were potentially persistent under its screening criteria. However the updated assessment further recognized the limitations of some of the existing studies. The report noted that previous biodegradation studies with SCCPs (typically showing significant but low levels of degradation) were conducted at concentrations considerably in excess of the very low water solubility of SCCPs which range from approximately 0.001 to 1 mg/l, depending on chain length and chlorination level.

To address the uncertainties surrounding its persistence properties, the CP industry has initiated a program to conduct a simulation test for biodegradability using a water-sediment test system (based on OECD Guideline 308). A draft protocol (attached) has been provided to the UK authorities for their review and comment and is being provided to Ecology for its input as well.

The CP industry maintains that the results from this test should be considered by Ecology prior to concluding that SCCPs meet the states persistence criteria.

Incorporation of the PBT List into the Rule Renders this a Significant Rulemaking and not Merely a Procedural Rule

We understand that Ecology has taken the view that the proposed rule is strictly procedural under RCW 34.04.328 (5,c,i), in that it is only intended to address the internal operations of the agency, i.e., making decisions on how an agency prioritizes its work in dealing with persistent bioaccumulative toxins in the environment. The CP industry vehemently disagrees.

The designation of a substance as a PBT, whether made by the federal EPA, the federal Environment Canada or the State of Washington, will trigger a shift away from the use of these substances. There are sufficient examples throughout the history of chemical control programs where either governmental or voluntary programs have resulted in the shift from one substance to another, only to find that the replacement substance is more toxic than the substance that is being replaced. While we recognize that Ecology is not directing industry to shift from listed substances to unlisted substances, it must be recognized that the mere inclusion of a compound on the list will drive some companies to shift without adequate consideration of the properties of the substitute compound. For these reasons we believe it is important that Ecology proceed carefully in designating a substance as a PBT.

In our view, if Ecology's intention is to adopt purely a procedural rule, it should remove reference to any specific list of PBT substances, as it is the designation of a substance as a PBT that renders this rule a substantive legislative action. Instead, we suggest that Ecology focus its rulemaking on defining the process for declaring a substance a PBT and associated actions, and not the incorporation of an initial list of PBT substances.

We believe that Ecology should be particularly cautious in declaring a substance as a PBT when that substance has not been so declared by the recognized international and federal authorities that have been very active in these areas, such as the United Nations and the U.S. Environmental Protection Agency. We appreciate that Ecology does not want to be constrained to only consider substances that have been deemed PBT by these recognized bodies - nonetheless, we believe it is incumbent on Ecology to undertake a critical review of the underlying data for all substances it declares as PBTs, but most

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assuredly for substances that have not been so deemed to be PBTs by these recognized international and federal bodies.

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We hope that you will seriously consider these comments in revising the PBT rule. We would welcome the opportunity of working with Ecology as the PBT rulemaking process moves forward.

Sincerely,

A handwritten signature in black ink, reading "Robert J. Fensterheim". The signature is written in a cursive, flowing style.

Robert J. Fensterheim
On behalf of the CP Industry